I refer in particular to the inferences drawn from the evidence relating to the blank invoice form of Chop Sin Hup Huat; the conclusion that the name See Hong was necessarily false and the inference therefrom; the inference regarding the extra weight of the stoves and the conclusion that the witness Cheah Bak Weng (P. W. 5) would not have placed the stoves in the hands of others unless one person at least knew what they contained and could be trusted. The latter certainly, but not necessarily the former.

I feel, therefore, though I confess with some hesitation, that there was a doubt in this case, the benefit of which it would have been safer to give to the appellant.

For this reason I allow the appeal and quash the conviction.

Appeal allowed.

G. A. KHUMREE & CO.
v.
S. K. MOHAMOODHU & CO.

[Orig. Civ. Juris. (Jobling, J.) May 31, 1950]

[Penang — Originating Summons No. 33 of 1950]

Japanese Judgments and Civil Proceedings Ordinance, 1946 — Judgment obtained in Japanese Court on pre-occupation debt — Judgment debt paid in full during occupation — Whether payment should be revalued — Debtor and Creditor (Occupation Period) Ordinance, 1948.

In this case the applicants had obtained judgment in the Japanese Court against the respondents in October 1943 on a pre-occupation debt. They took no steps to enforce the judgment and in July 1945 the respondents paid the judgment debt in full. The applicants applied for substitution of the judgment of the Court for the judgment given by the Japanese Court and also applied that the provisions of the Debtor and Creditor (Occupation Period) Ordinance, 1948, be taken into account by the Court and that the repayment be revalued.

Held, that the amount paid by the respondent must be revalued in accordance with the Debtor and Creditor (Occupation Period) Ordinance and that a judgment of the Court for the balance found to be due be substituted for the judgment of the Japanese Court.

Case referred to :—

(1) *Thellusson v. Liddard* (1900) 2 Ch. 635.

ORIGINATING SUMMONS.

T. E. Conaghan (*Sir Husein Abdoolcader* with him) for the applicants.

Ong Huck Lim for the respondents.

Cur. Adv. Vult.

Jobling, J. : — This matter came up for argument in Open Court on an Originating Summons applying for substitution of a judgment of this Court for a judgment given by the Japanese Court pursuant to the Japanese Judgments and Civil Proceedings Ordinance, 1946.

The facts are not in dispute. The applicants obtained judgment in the Japanese Court against the respondents in October, 1943 but took no steps to enforce it. In July, 1945 the respondents paid the judgment debt in full.

The Japanese Judgments and Civil Proceedings Ordinance, 1946 provides for the substitution of judgments of this Court for those of the Japanese Court and sub-section (5) of Section 5 of that Ordinance provides that in issuing any judgment under the provisions of the Ordinance the Court shall take into account .—

"the extent to which the Japanese decree may already have been satisfied, the provisions of any Ordinance dealing with the payment of debts in Japanese or Japanese sponsored currency and all such matters as may be prescribed."

Since the enactment of this Ordinance the Debtor and Creditor (Occupation Period) Ordinance, 1948 has been passed and provides for the revaluation of certain payments made in Japanese currency during the Japanese occupation. Section 4 of that Ordinance, after referring to payments accepted under duress which has no application here, provides for revaluation of any payment made during the Japanese occupation in discharge of a debt where the debt :—

(1) was incurred prior to the commencement of the occupation period.
(2) exceeded $250/-.
(3) was not due at the time of payment.
(4) or if due, was not demanded by the creditor.
(5) or if due and demanded, was not paid within three months of the demand or any extended period that may have been agreed upon.

Mr. T. E. Conaghan for the applicants submitted that the matter came within the Ordinance as it was a pre-occupation debt exceeding $250/- and although the legal proceedings to obtain judgment may have constituted a demand the amount was not paid within three months of the date of the judgment.

On the authority of *Thellusson v. Liddard*[1] he contended the original debt had not merged in the judgment debt, as merger must now be both at law and in equity and there was no merger in equity here.

Mr. Ong Huck Lim for the respondents contended that the debt had merged in the judgment debt and lost its character as a pre-occupation debt and that section 4 of the Debtor and Creditor (Occupation Period) Ordinance did not apply.

On the question of merger it is clear that the original debt is no longer actionable and as this is the result of the deliberate act of the applicants there can be no doubt of their intention to extinguish it. The original debt has therefore, I think, merged in the judgment debt both at law and in equity. But I do not think that is the real point in this matter.

The application is under the Japanese Judgments and Civil Proceedings Ordinance, 1946, which directs the Court to take into account provisions which are now to be found in the Debtor and Creditor (Occupation Period) Ordinance, 1948. The duty of the Court is to construe and apply those provisions according to their intention. The Ordinance aims at giving some relief to persons in the position of the applicants, who have given valuable consideration in terms of pre-war currency and have only received the less valuable Japanese currency in return, and this must be borne in mind when construing it.

The applicants put an end to all doubts as to their rights against the respondents by obtaining judgment against them for value received in pre-war days. They took no steps to enforce the judgment and the respondents after waiting twenty months took advantage of a period of financial chaos when the end of the war was imminent to satisfy the judgment in almost worthless Japanese currency. In my opinion the circumstances are exactly such as the Ordinance is designed to relieve.

The applicants in obtaining judgment against the respondents did nothing to alter the debtor and creditor relationship of the parties or to debar them from the benefit of the Ordinance and to construe the term "pre-occupation debt" as narrowly as the respondents suggest so as to deprive the applicants of their right of relief under the Ordinance would, I think, be contrary to the clear intention of the law.

I therefore grant the order applied for. The amount paid by respondents must be re-valued in accordance with the Debtor and Creditor (Occupation Period) Ordinance and a judgment of this Court for the balance found to be due substituted for the judgment of the Japanese Court.

Costs to be paid by respondents.

Order accordingly.

WILLIAM HORACE SAULT
v.
NORIAH BINTE OSMAN.

[Orig. Civ. Juris. (Pretheroe, J.) May 9, 1950]

[Malacca — Originating Motion No. 11 of 1949]

Debtor and Creditor (Occupation Period) Ordinance, 1948, s. 11(5) — Application by Originating Motion — Whether oral evidence can be given at hearing of motion — Rules of the Supreme Court, Order 36 rule 1 and Order 49 rules 1 — 7 and 10.

In this Originating Motion the applicant claimed certain relief under section 11(5) of the Debtor and Creditor (Occupation Period) Ordinance, 1948. Affidavits were filed by both parties. When the motion came up for hearing counsel for the respondent applied for leave to call witnesses to prove that the repayment of the mortgage debt had been compelled by duress. The applicant opposed the motion on the ground that the Court had no jurisdiction to authorise the calling of witnesses in a motion such as that before the Court.

Held, (1) that on the hearing of motions witnesses may, with the consent of the Court, be called in exceptional cases where it is not possible to ascertain the essential facts; (2) that in the present motion the witnesses desired to be called could have given evidence by affidavit and the fact that they had not done so was not a ground on which an application to call them as witnesses could be successfully based; (3) that in this case therefore the oral evidence in support of the respondent could not be given.

Cases referred to:—

(1) *Dean and Chapter of Chester v. Smelting Corporation* (1902) W.N. 5.

(2) *Leiserach v. Schalit* (1934) 2 K.B. 353.

ORIGINATING MOTION.

Applicant in person.

C. S. Jayaswal for the respondent.

Pretheroe, J. : — In this Originating Motion Mr. Sault claims certain relief under sub-section (5) of section 11 of the Debtor and Creditor (Occupation Period) Ordinance, 1948. Affidavits have been filed by both parties and the motion came up for hearing on the 15th March last. When the motion was called Mr. Jayaswal, Counsel for the respondent, immediately applied for leave to call witnesses to prove that the repayment of the mortgage debt had been compelled by duress. Mr. Sault opposed the application on the ground that the Court had no jurisdiction to grant it. He referred to the rules relating to motions *viz.* rule 1 of Order 36 and rules 1 to 7 inclusive and rule 10 of Order 49 of the Rules of the Supreme Court and submitted that none of these rules gave the Court jurisdiction to authorise the calling of witnesses in a motion such as this now under consideration. He also referred to the note appended to rule 5 of Order 49 in the Straits Settlements Practice which states that